

(4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) In accordance with OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 (15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000, and IEEE 1680).

[60 FR 48238, Sept. 18, 1995, as amended at 62 FR 44810, Aug. 22, 1997; 64 FR 51834, Sept. 24, 1999; 66 FR 65352, Dec. 18, 2001; 68 FR 43858, July 24, 2003; 71 FR 218, Jan. 3, 2006; 72 FR 63043, Nov. 7, 2007; 72 FR 73216, Dec. 26, 2007]

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001; for DoD components, DoD 4120.24-M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.24-M may be obtained from DoD (see 11.201(d)(2) or 11.201(d)(3)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce’s National Technical Information Service (NTIS) (see address in 11.201(d)(4)).

[70 FR 57452, Sept. 30, 2005, as amended at 71 FR 228, Jan. 3, 2006]

11.103 Market acceptance.

(a) 41 U.S.C. 3307(e) provides that, in accordance with agency procedures, the head of an agency may, under ap-

propriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency’s minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency’s needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item’s acceptability to meet the agency’s minimum need;

(2) Relate to an item’s performance and intended use, not an offeror’s capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government’s requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

[60 FR 48238, Sept. 18, 1995, as amended at 79 FR 24199, Apr. 29, 2014]